

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
OF THE STATE OF WASHINGTON

IN THE MATTER OF THE)
ASSESSMENT OF A PENALTY)
AGAINST AMERICAN CONTRACTING)
AND DESIGN CO. BY THE SPOKANE)
COUNTY AIR POLLUTION CONTROL)
AUTHORITY)
_____)

DOCKET NO. HB 70-35
FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND JUDGMENT
APPEAL FROM CIVIL PENALTY

This appeal was heard in the Assembly Room of the Board of County Commissioners in the Spokane County Court House on March 17, 1971. The Hearings Officer was a member of the Pollution Control Hearings Board, Walt Woodward.

The appellant, American Contracting and Design Co., a corporation appearing by Patrick Jeppesen, and the respondent, Spokane County Air Pollution Control Authority, appearing by Fred A. Shiosaki, its Director.

The testimony of the witnesses for the respondent established there were two open fires on a site where the appellant was involved in building construction, about five feet across and three feet high. The opinion of Mr. Shiosaki was that the fires were primarily for burning waste material, and only secondarily for warming workmen. The temperature was 35° and there were no workmen around the fires. No approval had been sought for open fires, and no compliance with the regulations requiring warming fires to be in containers.

The testimony of the witnesses for the appellant was that

the fires were for warming the workmen, and it was conceded that one, at least, was of the proximate size testified to by Mr. Shiosaki; that someone in the office of the Authority had advised that containers were not necessary for warming fires, and that if such fires were "reasonably small," no approval was required.

It was conceded that no approval was required for "reasonably small" warming fires and that while containers were required for such fires, it was entirely possible that the misinformation on that point had been given the appellant's representative.

From the testimony of all the witnesses, the Pollution Control Hearings Board makes the following

FINDINGS OF FACT

That at least one of the fires was too large to be merely a warming fire; that neither fire was in a container, and they were both open fires; that the appellant's representative was misadvised re the necessity for containers for warming fires.

From these Findings of Fact, the Pollution Control Hearings Board reaches the following

CONCLUSIONS

That there was an open fire for other than warming purposes, i.e., burning of waste construction material which was a violation of Section 6.01 of Regulation 1 of the Spokane County Air Pollution Control Authority; that the failure to use containers

was excused by reason of misinformation obtained through the respondent's office; that the penalty imposed was, under all the circumstances, excessive.

From the foregoing Findings and Conclusions, the Pollution Control Hearings Board enter the following

JUDGMENT

That the civil penalty of \$100.00 imposed upon the appellant, American Contracting and Design Co., by the respondent, Spokane County Air Pollution Control Authority, is excessive, and the same is hereby set aside, and the matter remanded to the Spokane County Air Pollution Control Authority for the imposition of a civil penalty commensurate with the offense, under the circumstances then and there existing.

DONE at Olympia, Washington, this 6th day of April, 1971.

POLLUTION CONTROL HEARINGS BOARD

By Matthew W. Hill
Matthew W. Hill, Chairman

James T. Sheehy
James T. Sheehy, Member

Walt Woodward
Walt Woodward, Member